

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **August 8, 2006, Work Session**

AGENDA ITEM NO.: 1

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Open Air Burning**

RECOMMENDATION: Discuss possible amendments to the Open Air Burning Ordinance. Any proposed amendments should be subject to a public hearing.

SUMMARY: When Council last discussed this matter it was decided to wait until after the State Air Pollution Control Board (SAPCB) had adopted revised regulations to consider possible changes to the City's ordinance. The revised state regulations have been adopted and are attached for reference. You will note on the first page of the regulations that they are not intended to prohibit the burning of leaves. Any such prohibition is left to the localities under local ordinances approved by the SAPCB. On the other hand, adoption of the state model ordinance would eliminate open burning because the City provides for the pickup of leaves and yard debris. Any amendment to the City's current ordinance would be subject to SAPCB review and approval.

Open burning complaints within the City of Lynchburg are received in two ways. The first way is through a 9-1-1 call placed with Lyn-Comm which results in an engine company being dispatched to investigate and handle the situation. The second way is a call directly to the Fire Marshal's Office which results in someone from that office being assigned to investigate the complaint. In addition, the Fire Marshal's Office issues open burning permits for land clearing purposes.

After reviewing the data from the CAD (Computer Aided Dispatch) and from the Fire Marshal's Office, the information summary below may be of use to City Council in their deliberations:

- From January 1, 2003 to July 31, 2006, the Lynchburg Fire & EMS Department has been dispatched to a total of 285 illegal open burning calls.
- One hundred and eighty (180) calls (63%) were determined to be founded. This means that the fire was determined to be in violation of the City Code and extinguished.
- One hundred and five (105) calls (37%) were determined to be unfounded calls. This means that either the fire was not located or it was determined that the open burning activity was within the City Code guidelines and therefore allowed.
- In 2005, the Fire Marshal's Office investigated 19 complaints of open burning. Three (3) of nineteen (19) were determined to be unfounded. Eleven open burning permits were issued for land clearing purposes.
- From January 1, 2006 to July 31, 2006, the Fire Marshal's Office investigated eight (8) complaints of open burning with all eight being unfounded. Three open burning permits were issued for land clearing purposes.

An exact breakdown of the percentages is unavailable, however, quite a number of the calls were associated with people being unaware that a ban on burning had been put in place due to adverse weather conditions and otherwise were operating within the guidelines. There were also quite a number of calls associated with construction contractors burning debris and residents burning household refuse. All of these fires were small in nature and extinguished.

PRIOR ACTION(S): Discussion during January 24, 2006 Work Session (agenda summary attached).

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne; Walter Erwin; Doug DeJarnette; Brad Ferguson

ATTACHMENT(S): State regulations, City Code excerpt, January 24 Agenda Summary

REVIEWED BY: lkp

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

9 VAC 5 CHAPTER 40.  
EXISTING STATIONARY SOURCES.  
PART II.

Emission Standards.

ARTICLE 40.

Emission Standards For Open Burning (Rule 4-40).

9 VAC 5-40-5600. Applicability.

A. Except as provided in ~~subsection~~ subsections C and D of this section, the provisions of this article apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

D. The provisions of this article do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9 VAC 5-40-6250 et seq.), 46 (9 VAC 5-40-6550 et seq.), or 54 (9 VAC 5-40-7950 et seq.) of 9 VAC 5 Chapter 40 or (ii) Subparts Eb, AAAA or CCCC of 40 CFR 60.

9 VAC 5-40-5610. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

B. As used in this article, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste which ~~does not produce emissions of greater than 40% opacity when burned and which~~ is not prohibited to be burned under this article and which consists only of (i) 100 percent wood waste, (ii) 100 percent clean lumber or clean wood, (iii) 100 percent yard waste, or (iv) 100 percent mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles).

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste which is produced or generated during construction of structures, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means stumps, wood, brush, and leaves from land clearing operations wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

"Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living~~ readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:~~

a. ~~— Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~

b. ~~— Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed~~ a "hazardous waste" as described in 9 VAC 20 Chapter 60 (9 VAC 20-60) (Hazardous Waste Management Regulations).

"Household ~~refuse~~ waste" means ~~waste material and trash normally accumulated by a household in the course of ordinary day-to-day living~~ any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

"Industrial waste" means ~~all waste generated on the premises of~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

~~manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills~~ any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

government.

"Open burning" means the ~~burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney~~ combustion of solid waste without:

a. Control of combustion air to maintain adequate temperature for efficient combustion;

b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

c. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain ~~destructors~~ incinerators and over draft incinerators.

"Refuse" means ~~trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations~~ all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris and nonhazardous industrial solid waste. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means ~~a~~ an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

9 VAC 5-40-5620. Open burning prohibitions.

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9 VAC 5-40-5630.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

F. With regard to the provisions of subsection E of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No disposal of waste by open burning or transportation of waste to be disposed of by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

G. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9 VAC 5-70-10 et seq.) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

9 VAC 5-40-5630. Permissible open burning.

Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through G of 9 VAC 5-40-5620 are met:

1. Upon the request of an owner or a responsible civil or military public

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard which constitutes a threat to the public health, safety or welfare and which cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

- a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60).
- b. Disposal of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9 VAC 20 Chapter 80 (9 VAC 20-80).
- c. Disposal of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order (i) to suppress, control, or eradicate an infestation or pest; (ii) to prevent or retard the spread of an infestation or pest; or (iii) to prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement. Buildings which have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9 VAC 5-40-5620 are not burned.

5. In urban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

6. Open burning is permitted for the disposal of household ~~refuse~~ waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9 VAC 5-40-160 et seq.) of this chapter and Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50. Permits issued under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60).

8. Open burning or the use of special incineration devices is permitted for disposal of clean burning ~~construction waste; and debris waste; and demolition waste resulting from property maintenance; from the development or modification of roads and highways; parking areas; railroad tracks; pipelines; power and communication lines; buildings or building areas; sanitary landfills; or from any other clearing operations.~~ Buildings which have not been demolished may be burned only as provided in subdivision 2 of this section. Open burning or the use of special incineration devices for the purpose of such disposal is prohibited in the Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206) during June, July, and August. As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas volatile organic compounds emissions control areas (see 9 VAC 5-20-206) during May, June, July, and August, and September.

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9 VAC 5-40-5631), provided the following conditions

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

are met:

a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for disposal of clean burning ~~construction waste~~, and debris waste, ~~and demolition waste~~ on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such disposal is prohibited in ~~the Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206) during June, July, and August. As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas~~ volatile organic compounds emissions control areas (see 9 VAC 5-20-206) during May, June, July, and August, and September.

9 VAC 5-40-5631. Forest management and agricultural practices.

A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through G of 9 VAC 5-40-5620 are met.

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

1. To reduce forest fuels and minimize the effect of wild fires.
2. To control undesirable growth of hardwoods.
3. To control disease in pine seedlings.
4. To prepare forest land for planting or seeding.
5. To create a favorable habitat for certain species.
6. To remove dead vegetation for the maintenance of railroad, highway

and public utility right-of-way.

C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:

1. To destroy undesirable or diseased vegetation.
2. To clear orchards and orchard prunings.
3. To destroy fertilizer and chemical containers.
4. To denature seed and grain which may no longer be suitable for

agricultural purposes.

5. To prevent loss from frost or freeze damage.
6. To create a favorable habitat for certain species.
7. To destroy strings and plastic ground cover remaining in the field after

being used in growing staked tomatoes.

9 VAC 5-40-5640. Repealed.

9 VAC 5-40-5641. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)  
governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances which have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning which differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

consider, but will not be limited to, the following criteria:

- a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
  - b. Adequate local resources will be committed to enforcing the proposed local ordinance.
  - c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.
  - d. If a waiver from any provision of Article 40 (9 VAC 5-40-5600 et seq.) of 9 VAC 5 Chapter 40 has been requested under 9 VAC 5-40-5640, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.
2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.
  3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.
  4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

- a. A public hearing is held prior to granting the variance;
- b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
- c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9 VAC 5-20-60 shall not apply to local ordinances concerned solely with open burning.

C. Model Ordinance.

ORDINANCE NO. (000)

**Section (000-1). Title.** This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

**Section (000-2). Purpose.** The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

**Section (000-3). Definitions.** For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

B. "Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

~~C. "Clean burning waste" means waste which does not produce dense smoke when burned and is not prohibited to be burned under this ordinance and which consists only of (i) 100 percent wood waste, (ii) 100 percent clean lumber or clean wood, (iii) 100 percent yard waste, or (iv) 100 percent mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.~~

~~D. "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.~~

~~E. "Clean wood" means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped).~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles).

~~EE.~~ "Construction waste" means solid waste which is produced or generated during construction ~~of structures remodeling, or repair of pavements, houses, commercial buildings and other structures.~~ Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

~~DG.~~ "Debris waste" means ~~stumps, wood, brush, and leaves from land clearing operations~~ wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

~~EH.~~ "Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

~~FI.~~ "Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living~~ readily putrescible discarded materials composed of animal, vegetable or other organic matter.

~~GJ.~~ "Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:~~

- ~~1. Cause or significantly contribute to an increase in mortality or an~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

~~increase in serious irreversible or incapacitating illness; or~~

~~2. — Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed a "hazardous waste" as described in 9 VAC 20 Chapter 60 (9 VAC 20-60) (Hazardous Waste Management Regulations).~~

~~HK. "Household refuse waste" means waste material and trash normally accumulated by a household in the course of ordinary day to day living any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies..~~

~~HL. "Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

~~JM.~~ "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

~~KN.~~ "Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further definitions of these terms.

~~LQ.~~ "Local landfill" means any landfill located within the jurisdiction of a local government.

~~MP.~~ "Open burning" means the ~~burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney~~ combustion of solid waste without:

a. Control of combustion air to maintain adequate temperature for efficient combustion;

b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

c. Control of the combustion products' emission

~~NQ.~~ "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

space, thus reducing the amount of combustion byproducts emitted into the atmosphere.

The term also includes trench burners, air curtain ~~destructors~~ incinerators and over draft incinerators.

~~OR.~~ "Refuse" means ~~trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations~~ all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

~~PS.~~ "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

~~QI.~~ "Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris and nonhazardous industrial solid waste. See Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) for further definitions of these terms.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

~~R.U.~~ "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

~~S.V.~~ "Special incineration device" means a an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

~~W.~~ "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

~~X.~~ "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

**Section (000-4). Prohibitions on open burning.**

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9 VAC 5-70-10 et seq.) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

**Section (000-5). Exemptions.** The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

- A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;
- B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;
- C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;
- D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and
- E. Open burning for the destruction of classified military documents.

**Section (000-6). Permissible open burning.**

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted(; and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road<sup>1</sup>).

B. Open burning is permitted for the disposal of household ~~refuse~~ waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted(; and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road<sup>2</sup>).

C. Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by (designated local official), provided the following conditions are met:

---

<sup>1</sup>This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

<sup>2</sup>This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. The burning shall be conducted at the greatest distance practicable from highways and air fields,
5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;
6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and
7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board;
2. The burning shall be attended at all times;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning ~~construction~~ waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6.A. through D. notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July, or August.<sup>3</sup>)

**Section (000-7). Permits.**

A. When open burning of debris waste (Section 000-6.C.) or open burning of debris on the site of a local landfill (Section 000-6.D.) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions which are deemed necessary to ensure that the burning will not

---

<sup>3</sup>This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7.A. or 000-7.B. shall be accompanied by a processing fee of \$----.<sup>4</sup>)

**Section (000-8). Penalties for violation.**

A. Any violation of this ordinance is punishable as a Class I misdemeanor. (See § 15.1-901 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

9 VAC 5-40-5645. Waivers.

---

<sup>4</sup>The fee stipulation in this section is optional at the discretion of the jurisdiction.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9 VAC 5 CHAPTER 40)

A. A waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.

B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:

1. The demonstration should show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.

2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.

C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.

D. A waiver from any applicable provision of this article may be granted by the board for any locality which has lawfully adopted an ordinance in accordance with 9 VAC 5-40-5641.

## Excerpt from the Lynchburg City Code

### ARTICLE IV. OPEN AIR BURNING\*

**\*Editor's note**—See the editor's note to §§ 4-1-- 4-12.

#### Sec. 4-58. Definitions.

The following definitions shall apply to these words when used in this article.

- (a) Garbage. Putrescible animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living.
- (b) Household refuse. Waste material and trash normally accumulated by a household in the course of ordinary day-to-day living.
- (c) Open burning. The burning of any matter in such a manner that the resulting products of combustion from the burning are emitted directly into the atmosphere without passing through a stack, duct or chimney.
- (d) Refuse. Trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land cleaning, forest management, and emergency operations. (Ord. No. O-81-149, § 1 [Art. I, § 4.1-1], 6-23-81)

#### Sec. 4-59. Open burning—Generally.

Except as provided in Sections 4-60 through 4-63 of this chapter, within the Lynchburg city limits:

- (a) No owner or other person shall cause, suffer, allow or permit open burning of household or other refuse.
- (b) No owner or other person shall cause, suffer, allow or permit open burning of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum-based materials, except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.
- (c) No owner or other person shall cause, suffer, allow or permit open burning for the purpose of a salvage operation.
- (d) No owner or other person shall cause, suffer, allow or permit open burning of toxic or hazardous materials or containers for such materials.

(e) No owner or other person shall cause, suffer, allow or permit open burning of garbage, animal carcasses or animal wastes.

(f) No owner or other person shall cause, suffer, allow or permit open burning so as to produce such quantities of air pollutants, uncombined water or other materials as may cause a traffic hazard.

(g) Upon declaration by the fire marshal's office that atmospheric or other conditions (i.e. high winds, adverse humidity, etc.) are not acceptable to permit open burning that is otherwise permitted under Sections 4-60 through 4-63 of this chapter, no owner or other person shall cause, suffer, allow or permit open burning; and any in-process burning shall be immediately terminated. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which atmospheric or other conditions are unacceptable for open burning otherwise permitted under Sections 4-60 through 4-63 of this chapter.

(h) Open burning permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liabilities, damages or injuries which may result from such burning, nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of governmental entities having jurisdiction over such burning, even though the open burning is conducted in compliance with this article. (Ord. No. O-81-149, § 1 (Art I, § 4.1-2), 6-23-81)

#### Sec. 4-60. Same — Exceptions.

Open burning is permitted in the following instances, provided the provisions of subsections (a) through (g) of section 4-59 of this chapter are met, and provided the person or persons responsible for such burning shall obtain the permit, if applicable, required by paragraph (i) of this section.

(a) Upon the request of an owner or responsible public official, civil or military, the division of inspections may approve open burning under controlled conditions, for the elimination of a hazard which constitutes a threat to the public health, safety or welfare and which cannot be remedied by other means consonant with the circumstances presented by the hazard.

(b) Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated officials and industrial in-house fire fighting personnel with clearance from the fire marshal's office. The designated officials in charge of the training shall notify and obtain the approval of the division of inspections prior to conducting the training exercise. Training

schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement.

(c) Open burning is permitted for campfires or other fires that are used solely for recreational or ceremonial purposes, provided the owner or other person conducting such campfire, recreational or ceremonial fire complies with the provisions of Article 3, F-301.0 of the Lynchburg Fire Prevention Code.

(d) Open burning is permitted for outdoor noncommercial preparation of food, and for warming of outdoor workers, provided materials specified in subsections (a), (b), (d) and (e) of section 4-59 of this chapter are not burned.

(e) Open burning of leaves located on the premises of private residences is permitted, provided the requirements of section 4-62 of this chapter are met.

(f) Open burning of tree, yard and garden trimmings located on the premises of private residences is permitted, provided the accumulation of tree, yard and garden trimmings to be burned does not exceed eight (8) feet in any direction, and provided the requirements of section 4-63 of this chapter are met.

(g) Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack.

(h) Open burning is permitted for disposal of land clearing refuse on the site of clearing operations resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills or from any other clearing operations which may be approved by the division of inspections, provided the following conditions are met:

(1) All reasonable efforts must be employed to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, saw logs and firewood.

(2) The material to be burned shall consist of brush, stumps and similar land clearing refuse generated at the site and shall not include demolition material or any other refuse brought in from other sites.

(3) The burning shall be at least one thousand (1,000) feet from any occupied building or buildings unless the owner(s) or occupant(s) has given prior written permission for closer burning or shall be greater than one thousand (1,000) feet from any occupied building or buildings if the division of inspections determines that it is necessary to protect public health and welfare.

(4) The burning shall be supervised at all times by such personnel and equipment as the division of inspections and the fire marshal's office determine is necessary to protect the public health and welfare.

(5) The burning shall be conducted only when the prevailing winds and atmospheric conditions are acceptable, as determined by the fire marshal's office.

(i) When any burning contemplated by paragraphs (a), (g), or (h) of this section is to occur, or where the burning permitted by paragraph (f) exceeds the maximum limits, the person or persons responsible for the burning shall, within seventy-two (72) hours prior to such burning, apply for a permit from the division of inspections. Such permit may be granted only after an on-site inspection and confirmation by the division of inspections and the fire marshal's office determines that the burning can and will comply with the conditions set forth in paragraph (h) of this section and any other conditions which are deemed necessary by the division of inspections and the fire marshal's office to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of this chapter or the laws and regulations of any governmental entities having jurisdiction over such burning. The fees for such permits shall be as follows:

(1) For open burning of five (5) acres or less, a flat fee of twenty-five dollars (\$25.00) plus one dollar (\$1.00) for each acre to be burned or one dollar (\$1.00) for each acre from which materials have been gathered to be burned.

(2) For opening burning of more than five (5) acres, but not exceeding ten (10) acres, a flat fee of twenty-five dollars (\$25.00) plus five dollars (\$5.00) per acre to be burned or five dollars (\$5.00) for each acre from which material has been gathered to be burned.

(3) For open burning in excess of ten (10) acres, a flat fee of one hundred dollars (\$100.00).

In the event any open burning for which a permit has been issued pursuant to this section does not take place within three (3) days from the issuance of such permit, the permit shall expire, and before the proposed open burning can take place, the permit must be renewed by the division of inspections. Any applicant who applies for renewal of a permit prior to the expiration of the same shall not be required to pay any additional fees for renewal of the permit. In the event any open burning for which a permit has been issued pursuant to this section does not take place within three (3) days from the issuance of such permit, and the applicant later applies for renewal of such permit the payment of any additional license fees shall be at the discretion of the division of inspections.

(j) Open burning is permitted for forest management and agricultural practices approved by the division of inspections provided the conditions and requirements of the state air pollution control board have been met. (Ord. No. O-81-149, § 1 [Art. I, § 4.1-3], 6-23-81)

#### Sec. 4-61. Same — Exclusions.

This article does not apply to open burning using devices or methods specifically designed to provide good combustion performance, provided the following conditions are met:

(a) The owner or other person conducting such burning shall use only such devices that have been approved and required by the division of inspections and the fire marshal's office.

(b) Visual emissions shall comply with all applicable state and federal laws.

(c) Prior to the initial installation (or re-installation, in cases of relocation) and operation of devices or methods subject to the provisions of this section, the person responsible for the burning shall obtain a permit from the division of inspections. Such permit shall be granted only after an on-site inspection and confirmation by the division of inspections, and fire marshal's office determines that the burning can and will comply with the conditions of this section and any other conditions which are deemed necessary by the division of inspections and the fire marshal's office to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of this chapter or the laws and regulations of any governmental entities having jurisdiction over such burning. The fee for such permits shall be twenty-five dollars (\$25.00). (Ord. No. O-81-149, § 1 [Art. I, § 4.1-4], 6-23-81)

#### Sec. 4-62. Leaf burning generally prohibited; exceptions.

(a) The open burning of leaves within the city is prohibited, except as provided in paragraph (b) of this section.

(b) The opening burning of leaves from trees by persons on property where they reside is permitted from September 15 through February 15, of each year, between the hours of 8:00 a.m. and 8:00 p.m., provided that the person or persons conducting the burning has the permission of the property owner and provided that:

(1) At least one person of sixteen (16) years of age or older is supervising, and in close proximity to the burning at all times.

(2) A water hose, at least one-half (1/2) inch in diameter, with nozzle, connected to a fully charged, operational, outside bib spigot, is in close proximity to the burning at all times.

(3) The location of the burning is not less than forty (40) feet from any building or buildings and at least ten (10) feet from adjoining property lines and the public streets or other public rights-of-way. The location of the burning may be less than ten (10) feet from adjoining property lines, provided the adjoining property owner(s) has given prior written permission for such burning. The location of the burning may be less than ten (10) feet from the public streets or other public rights-of-way, provided the division of inspections has given prior written permission for such burning.

(4) The atmospheric conditions are acceptable, as determined by the fire marshal's office. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which the atmospheric conditions are unacceptable.

(5) Citizens must check with the fire marshal's office prior to setting fires. (Ord. No. O-81-149, § 1 [Art. II, § 4.1-5], 6-23-81)

Sec. 4-63. Burning yard trimmings generally prohibited; exceptions.

(a) The open burning of tree, yard and garden trimmings within the city is prohibited except as provided in paragraph (b) of this section.

(b) The opening burning of tree, yard and garden trimmings by persons on property where they reside is permitted, provided that the person or persons conducting the burning has the permission of the property owner and provided that:

(1) At least one person of sixteen (16) years of age or older is supervising and in close proximity to the burning at all times.

(2) A water hose, at least one-half (1/2) inch in diameter, with nozzle, connected to a fully-charged, operational, outside bib spigot, is in close proximity to the burning at all times.

(3) The location of the burning is not less than three hundred (300) feet from any occupied building or buildings unless the occupant or occupants has given prior written permission for closer burning, and at least ten (10) feet from adjoining property lines and the public streets or other public rights-of-way. The location of the burning may be less than ten (10) feet from the public streets or other public rights-of-way provided the division of inspections has given prior written permission for such burning.

(4) The atmospheric conditions are acceptable, as determined by the fire marshal's office. It shall be the duty of the fire marshal's office to advise the news media in the city on those days on which the atmospheric conditions are unacceptable.

(5) The accumulation of tree, yard and garden trimmings to be burned cannot exceed eight (8) square feet in any direction. If the accumulation of tree, yard and garden trimmings to be burned exceeds eight (8) feet in any direction, a permit must be obtained for such burning in accordance with the requirements of Section 4-60(i) of this chapter.

(6) Citizens must check with the fire marshal's office prior to setting fires. (Ord. No. O-81-149, § 1 [Art. III, § 4.1-6], 6-23-81)

#### Sec. 4-64. Enforcement.

(a) The provisions of this article shall be enforced by the division of inspections in conjunction with the fire marshal's office and the police department.

(b) Whenever the division of inspections or any member of the fire marshal's office or police department has reason to believe that a violation of any provision of this article or a rule or regulation issued pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. (Ord. No. O-81-149, § 1 [Art. IV, § § 4.1-7, 4.1-10], 6-23-81)

#### Sec. 4-65. Penalties.

Any owner or other person who violates the provisions of this article shall be guilty of a Class 2 misdemeanor. Each day of violation shall constitute a separate offense. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-8], 6-23-81)

#### Sec. 4-66. Nuisances prohibited.

Nothing in this article relating to open burning shall in any manner be construed as authorizing or permitting the creation of or maintenance of a nuisance. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-9], 6-23-81)

#### Sec. 4-67. Emergency procedure.

Notwithstanding the provisions of this article or any other provision of law, if the division of inspections or any member of the fire marshal's office or police



department finds that any owner or other person engaged in open burning is causing or creating an emergency which requires immediate action to protect the public health or safety, the division of inspections or such member of the fire marshal's office or police department shall order such owner or other person to discontinue such open burning immediately and such order shall be complied with immediately. Any owner or other person who fails to abide by such order shall be guilty of a Class 1 misdemeanor. If any owner or other person so warned fails to immediately discontinue such burning, the division of inspections, fire marshal's office, or police department may take whatever action is necessary to stop such open burning and the owner or other person who refused to discontinue the burning shall be liable for the expense incurred by the city in stopping the open burning. (Ord. No. O-81-149, § 1 [Art. IV, § 4.1-11], 6-23-81)

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **January 24, 2006, Work Session**

AGENDA ITEM NO.: 6

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Open Air Burning**

RECOMMENDATION: Discuss possible amendments to the Open Air Burning Ordinance.

SUMMARY: At Council's January 10 meeting a citizen suggested that the City should ban outdoor burning. Information provided for that meeting is attached here for reference. Included is a copy of the current ordinance which allows the burning of leaves and landscape clippings with certain conditions.

Coincident with this discussion, the State is currently advertising amendments to its regulations regarding open air burning. Those changes would require an examination of the City's ordinance in any case. City Attorney Walter Erwin will be able to address the proposed changes.

Former Fire Marshall Doug DeJarnette, now Acting Deputy Chief for Operations, will be in attendance during the work session. He has provided the following points for Council's consideration:

*\* Enforcement - Under the current ordinance, the Division of Inspections is charged with the responsibility for enforcement of the ordinance in conjunction with the Fire Marshal's Office and the Lynchburg Police Department. Since I came to work in the FMO (August 2004), we have been the sole agency doing enforcement and issuing permits. When this ordinance was originally adopted, there were 9 persons assigned to the FMO. Now there are 3. Even at that we respond to complaints quickly when they are received. I will be prepared to address questions as to our procedure for response and our actions based on our discovery.*

*\* Penalties - Penalties for infraction probably should be discussed in order to find a means to deter illegal or unwanted open air burning that would allow for some flexibility without automatically creating a criminal charge. Class 2 and Class 1 misdemeanor charges may be too severe for infractions of a minor nature. Automatic fines may be preferable in some instances.*

*\* Fees for permits should be adjusted upwards.*

*\* There is some specific language that should be cleaned up i.e. reference to the Lynchburg Fire Prevention Code.*

*\* I would really like to see the inclusion of a mechanism that would allow us to seize and remove ( at the expense of the owner, occupant, responsible party) any barrel or container that is utilized for the purpose of burning garbage or waste. We can extinguish the fire or have it extinguished but if the barrel remains then the barrel will probably be used again.*

If Council wishes to consider changes to the Open Air Burning Ordinance, it should discuss the process with respect to citizen input, for example, a public hearing on a draft ordinance. Furthermore, Council may want to examine alternatives to an absolute prohibition on outside burning such as increasing the distance that fires must be from occupied dwellings.

PRIOR ACTION(S): None

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne; Walter Erwin; Doug DeJarnette

ATTACHMENT(S): Information provided for January 10 Council meeting.

REVIEWED BY: lkp

Lynchburg City Council  
Lynchburg, Virginia

December 28, 2005

To the Lynchburg City Council,

I am a Lynchburg resident who would like to address the City Council regarding open air burning in Lynchburg. I live at 3400 Wilson Avenue and have lived at this address for 3 years. My next door neighbor burns leaves and other items in his yard quite frequently, and smoke fills my backyard, gets in my house, and has made me very ill since living at this address. I have an allergy to mold which I take allergy shots for, but when leaves which contain mold are burned, the mold travels through the air, and is inhaled by anyone who is near it, including me.

I have tried to talk to the neighbor about it, but he says he will continue to burn. I also have neighbors across the street, and several doors down who do outdoor burning as well. There are people besides me, especially older people, who are suffering badly from the inhalation of this second hand smoke. The toxins that it releases into the air, particularly from household trash such as styrofoam, are very dangerous, aggravate allergies, and cause respiratory problems.

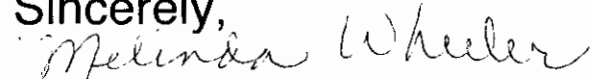
The quality of our air ultimately affects everyone who lives here, and it is our responsibility to make sure that it is safe and clean. I have woken up gasping in the middle of the night for air because of the smoke that pours into my yard, and my eyes are constantly red. I have severe headaches, dizziness, and sore throats, and have had to take time off from work as well.

There are many allergy and asthma sufferers in the

city who feel the same way. Therefore, I would like to present the City of Lynchburg City Council with a signed petition asking that they please vote to ban the dangerous practice of open air burning in Lynchburg.

Thank you very much for the opportunity to speak.

Sincerely,

A handwritten signature in cursive script that reads "Melinda Wheeler".

Melinda Wheeler  
3400 Wilson Avenue  
Lynchburg, Virginia  
24501

Kimball Payne/CityHall/COL

12/30/2005 11:50 AM

To Patricia W Kost/CityHall/COL@COL

cc Walter C Erwin/CityHall/COL@COL

bcc

Subject Fw: Citizen Request to go to Council

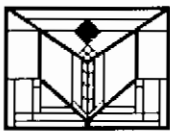
Pat,

Please include these emails from Walter and his attachment with the request from the citizen in Council's package so that they will have some background on this issue. Also, please include this excerpt from the City Code. Thank you.



Excerpt from the Lynchburg City Code re Open Air Burning.doc

----- Forwarded by Kimball Payne/CityHall/COL on 12/30/2005 11:39 AM -----



Walter C Erwin/CityHall/COL

12/29/2005 01:11 PM

To Kimball Payne/CityHall/COL@COL

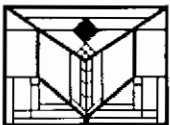
cc Robert D Dejarnette/PubSafe/COL@COL

Subject Fw: Citizen Request to go to Council

Kim,

The citizen's letter also complains about the toxins that are released into the air from the burning of household trash. The City Code specifically prohibits the burning of any type of household refuse. The only open burning that is allowed in the City is the burning of leaves; tree, yard and garden trimmings; land disposal refuse such as tree stumps, brush, etc; and combustible liquids or gaseous material in a flare or flare stack.

----- Forwarded by Walter C Erwin/CityHall/COL on 12/29/2005 01:05 PM -----



Walter C  
Erwin/CityHall/COL

12/29/2005 01:01  
PM

To Kimball Payne/CityHall/COL

cc Robert D Dejarnette/PubSafe/COL@COL

Subject Re: Fw: Citizen Request to go to Council

Kim,

The City's current Open Air Burning Ordinance was adopted in 1981. City representatives (the Fire Department, the Inspections Division, the City Attorney's Office) worked with representatives of DEQ in drafting the ordinance. At the time it was adopted the ordinance met the State's air pollution control standards. It is possible that DEQ may have a different position on the appropriateness of the burning of leaves at this time. I was on the committee that drafted the ordinance. There was discussion as to whether or not the City should prohibit all open air burning, including the burning of leaves. However, City officials ultimately decided that a complete ban on the burning of leaves was too harsh. It tried to draft an ordinance that balanced the needs of those citizens who wish to burn leaves against those citizens who are opposed to this practice. I am attaching a letter a former mayor had me send a citizen who was opposed to leaf burning. The issues are still the same as outlined in my letter. City Council could amend the City Code to prohibit the open air burning of leaves, brush, etc. if it wished. However,

most ordinances are drafted to address the needs of the "average citizen." The ultimate issue is how far the City wishes to go to protect those citizens that are overly sensitive to smoke. Of course, citizens certainly have the right to ask Council to amend the current ordinance.



leaf burning.rtf .

December 14, 1993

Mrs. June E. Gottshalk  
138 Darrow Lane  
Greenlawn, NY 11740-2907

Dear Mrs. Gottshalk:

The Mayor asked me to respond to your letter concerning, the open burning of leaves within the city.

The city does have an ordinance that allows the open burning of leaves from September 15 through February 15. However, the ordinance limits the hours of burning and imposes a number of requirements that must be met in order to burn leaves-i.e. citizens must check with the fire marshal's office to verify that atmospheric conditions are appropriate; there are restrictions on the location of burning; requires adult supervision, etc. The State's air pollution control officials assisted the City in writing this ordinance and it complies with the State's air pollution control standards. Further, in an effort to try and discourage citizens from burning leaves, the City provides free leaf pickup twice each fall.

The city realizes that some individuals are allergic to smoke and tries to be sensitive to their needs. Sensitivity to the needs of such individuals was one of the reasons the City adopted an ordinance regulating the smoking of cigarettes in public places. The City's leaf burning ordinance is an attempt to balance the needs of individuals who are sensitive to smoke against the needs of individual who have large amounts of leaves that must be removed and for one reason or another are not able to take advantage of the City's free leaf collection-e.g. may have missed the pickup date due to illness or vacation, etc. Unfortunately, the City cannot please all individuals regarding this subject. Some individuals believe that the City should ban all leaf burning while others believe that the city's current ordinance is too restrictive. The City has tried to reach a compromise that accommodates the needs of all its citizens.

Sincerely,

Walter C. Erwin